APPENDIX A

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

Name of Presiding Judge, Honorable William J. Lynch

Cause No. 75 C 2009 Date 7-1-75

Title of Cause

James Clark

v.

Gerald R. Weeks

Brief Statement of Motion

Ptff's Motion for extension of T.R.O. & Motion for Preliminary Injunction.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and
Addresses of
moving counsel

Representing

Names and
Addresses of
other counsel
entitled to
notice and names
of parties they
represent.

Notes: Ordered that the temporary restraining order entered by this Court in the above-entitled action on June 23, 1975, be extended in full force until such time as the Three-Judge Court hears and decides the pltff's. Motion for a preliminary injunction. (Draft)

/s/ W. J. L.
(Docketed Jul 3 1975)

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

APPENDIX B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

August 5, 1975

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*

Hon. JOHN PAUL STEVENS, *Circuit Judge*

Hon. WILLIAM J. BAUER, *Circuit Judge*

No. 75-1667

JAMES CLARK, Treasurer of DuPage County, and MICHAEL DUTTON,

Plaintiffs-Appellees,

vs.

GERALD R. WEEKS, etc., et al.,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 75 C 2009

WILLIAM J. LYNCH, *Judge*.

This matter comes before the Court on the "Motion of Defendants-Appellants for Suspension of Rule 2 of the Federal Rules of Appellate Procedure" and plaintiffs-appellees' "Motion to Dismiss Appeal for Lack of Jurisdiction and in the Alternative Answer in Opposition to Suspension of F.R.A.P. 2."

Defendants seek to appeal from an order entered by a Single Judge District Court on July 1, 1975, extending a temporary restraining order until such time as a

Three-Judge Court hears and decides plaintiffs' motion for a preliminary injunction. Defendants filed their notice of appeal from the district court's order on July 14, 1975. We note that plaintiffs' application for the convening of a Three-Judge Court was granted by the Single Judge District Court on June 26, 1975 and that on July 2, 1975 a Three-Judge Court was convened.

Plaintiffs argue that this Court is without jurisdiction to hear this appeal in light of 28 U.S.C. §§2284 (3) and (5) and that defendants must seek relief from the Three-Judge Court concerning dissolution or modification of the temporary restraining order. In *Hicks* v. *Pleasure House, Inc.* 404 U.S. 1 (1971) (Per Curiam), the United States Supreme Court addressed the issue of the proper court for review of a temporary restraining order entered by a Single Judge District Court when a Three-Judge Court has convened. Though a court of appeals may review a temporary restraining order entered pursuant to 28 U.S.C. §2284 (3), in the same manner and to the same extent that any such order is reviewable under 28 U.S.C. §§ 1291 and 1292(a), appellate review is improper if the notice of appeal is filed subsequent to the convening of a Three-Judge Court. The Supreme Court stated:

> "Thus, if a single judge oversteps his limited authority under §2284(3), a court of appeals may correct his error. In addition, a temporary restraining order issued pursuant to §2284(3) is reviewable in a court of appeals to the extent that any such order is reviewable under 28 U.S.C. §§ 1291 and 1292(a). However, if no such appeal is taken before the three-judge court is convened, application must be made to that court for vacation or modification of the temporary restraining order pending a final determination of the merits." *Hicks, supra* at 3.

In light of the foregoing,

IT IS HEREBY ORDERED that plaintiffs' motion to dismiss be, and the same is hereby, GRANTED.